

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/10/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000379

FILED: _____

STATE OF ARIZONA

PAUL W BADALUCCO

v.

DEANNA RAY FRIDLY

STEVEN W MCCLURE

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #IV8652

Charge: FAILURE TO STOP/REMAIN STOPPED FOR RED SIGNAL/PHOTO
RADAR

DOB: N/A

DOC: 01/09/02

This Court has jurisdiction of this appeal pursuant to the
Arizona Constitution Article VI, Section 16, and A.R.S. Section
12-124(A).

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This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The only issue raised by the Appellant concerns the sufficiency of the evidence presented to the trial judge concerning Appellant's identity that would warrant the finding of responsibility and civil sanction ordered. Appellant did not appear at the time scheduled for her trial. Her case is one of a "photo red-light" case wherein a stationary set of cameras photograph an intersection and record the face of the driver's and the driver's license plate.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

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action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

The trial judge heard strong circumstantial evidence of Appellant's identity from the State's witness when that witness testified that the traffic complaint was sent to the registered owner of the vehicle pictured in the State's exhibits. The State's witness also explained that instructions were provided when the citation was mailed to Appellant that if she contested identity, that is, if another person had been driving her vehicle, she could provide that other person's name to the Phoenix City Court. Appellant is incorrect when she contends that no evidence of identification was provided. Strong circumstantial evidence exists simply by virtue of the registration and license plate of the vehicle pictured in the exhibits. That evidence was neither challenged nor impeached.

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of responsibility and sanction imposed.

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.

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IT IS FURTHER ORDERED remanding this matter back to the
Phoenix City Court for all further and future proceedings.